

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 21, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 594

Introduced by Senator Torlakson

February 18, 2005

An act to amend Section 3030 of, and to add Section 3030.5 to, the Family Code, relating to support obligations.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as amended, Torlakson. Custody and visitation: sex offenders.

Existing law prohibits a court from granting custody of, or unsupervised visitation with, a child to a registered sex offender if the victim was a minor, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

This bill would expand that provision to prohibit a court from granting custody of, or unsupervised visitation with, a child to a person if that person resides with a registered sex offender whose victim was a child. The bill would also provide that an existing custody or visitation order shall be modified or terminated consistent with that provision, as specified. The bill would also include related findings and declarations of the Legislature.

The bill would incorporate additional changes to Section 3030 of the Family Code made by this bill and AB 220 to take effect if both bills are chaptered and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) The children of the State of California are placed at risk
4 when permitted to remain in contact with a parent or caretaker
5 who has committed a sex crime.
6 (b) It is the policy of the State of California that the health,
7 safety, and welfare of children shall be the court's primary
8 concern in determining the best interest of children when making
9 orders regarding custody or visitation.
10 (c) The perpetration of child abuse or domestic violence in a
11 household in which a child resides is detrimental to the child.
12 (d) Custody and visitation orders shall be made in a manner
13 that ensures the health, safety, and welfare of the child and the
14 safety of all family members.
15 (e) The purpose of this legislation is to ensure that information
16 regarding sex crimes is appropriately considered by the court in
17 child custody matters and children are protected from an at-risk
18 environment.
19 (f) With regard to juvenile court proceedings in which child
20 protective services seeks to remove the child from the home and
21 declare the child a dependant of the State of California,
22 subdivision (d) of Section 355.1 of the Welfare and Institutions
23 Code establishes a presumption that a child is placed at
24 "substantial risk of abuse or neglect" if a "parent guardian, or any
25 other person who resides with, or has the *care or* custody of, a
26 minor who is currently the subject of the petition ... is required,
27 as the result of a felony conviction, to register as a sex offender
28 pursuant to Section 290 of the Penal Code." Code..."
29 ~~(g) In the appellate case of In re John S. (2001) 88~~
30 ~~Cal.App.4th 1140, the court held that a stepfather's status as a~~
31 ~~registered sex offender constituted a presumption under~~
32 ~~subdivision (d) of Section 355.1 of the Welfare and Institutions~~
33 ~~Code that his stepchild was at a substantial risk of abuse or~~
34 ~~neglect, within the meaning of Section 300 of the Welfare and~~
35 ~~Institutions Code. The court further held that the intent of the~~

Legislature in enacting Section 355.1 of the Welfare and Institutions Code was to focus on the heightened risk facing minors who come into contact with sex offenders and to ensure the juvenile court has information about those persons when assessing jurisdictional facts. The court found that, “[b]ecause of the overriding need to protect the child, the legislative considerations regarding allocation of burden of proof should apply to nonecustodial parents and guardians.” However, the presumption was not conclusive and affected only the burden of producing evidence. Thus, parties may still present evidence that one’s status as a registered sex offender does not place a minor at substantial risk of abuse or neglect.

(h) Chapter 131 of the Statutes of 1998 amended Section 3030 of the Family Code. Prior existing law prohibited registered sex offenders and persons convicted of certain other offenses against minors, as specified, from being granted custody of, or unsupervised visitation with, a child, unless the court found that there was no significant risk to the child. Chapter 131 of the Statutes of 1998 amended the law to require the court to state its reasons in writing or on the record when granting physical or legal custody or unsupervised visitation.

SEC. 2. Section 3030 of the Family Code is amended to read:

3030. (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(2) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person’s household is required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code, unless the court finds there is no significant risk to the child and states its reasons in writing or on the record.

(3) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie

1 evidence that the child is at significant risk. When making a
2 determination regarding significant risk to the child, the prima
3 facie evidence shall constitute a presumption affecting the burden
4 of producing evidence. However, this presumption shall not
5 apply if there are factors mitigating against its application,
6 including whether the party seeking custody or visitation is also
7 required, as the result of a felony conviction in which the victim
8 was a minor, to register as a sex offender under Section 290 of
9 the Penal Code.

10 (b) No person shall be granted custody of, or visitation with, a
11 child if the person has been convicted under Section 261 of the
12 Penal Code and the child was conceived as a result of that
13 violation.

14 (c) No person shall be granted custody of, or unsupervised
15 visitation with, a child if the person has been convicted of murder
16 in the first degree, as defined in Section 189 of the Penal Code,
17 and the victim of the murder was the other parent of the child
18 who is the subject of the order, unless the court finds that there is
19 no risk to the child's health, safety, and welfare, and states the
20 reasons for its finding in writing or on the record. In making its
21 finding, the court may consider, among other things, the
22 following:

23 (1) The wishes of the child, if the child is of sufficient age and
24 capacity to reason so as to form an intelligent preference.

25 (2) Credible evidence that the convicted parent was a victim of
26 abuse, as defined in Section 6203, committed by the deceased
27 parent. That evidence may include, but is not limited to, written
28 reports by law enforcement agencies, child protective services or
29 other social welfare agencies, courts, medical facilities, or other
30 public agencies or private nonprofit organizations providing
31 services to victims of domestic abuse.

32 (3) Testimony of an expert witness, qualified under Section
33 1107 of the Evidence Code, that the convicted parent suffers
34 from the effects of battered women's syndrome.

35 Unless and until a custody or visitation order is issued pursuant
36 to this subdivision, no person shall permit or cause the child to
37 visit or remain in the custody of the convicted parent without the
38 consent of the child's custodian or legal guardian.

39 (d) The court may order child support that is to be paid by a
40 person subject to subdivision (a), (b), or (c) to be paid through

1 the local child support agency, as authorized by Section 4573 of
2 the Family Code and Division 17 (commencing with Section
3 17000) of this code.

4 (e) The court shall not disclose, or cause to be disclosed, the
5 custodial parent's place of residence, place of employment, or the
6 child's school, unless the court finds that the disclosure would be
7 in the best interest of the child.

8 *SEC. 2.5. Section 3030 of the Family Code is amended to*
9 *read:*

10 3030. (a) (1) No person shall be granted physical or legal
11 custody of, or unsupervised visitation with, a child if the person
12 is required to be registered as a sex offender under Section 290 of
13 the Penal Code where the victim was a minor, or if the person
14 has been convicted under Section 273a, 273d, or 647.6 of the
15 Penal Code, unless the court finds that there is no significant risk
16 to the child and states its reasons in writing or on the record.

17 (2) *No person shall be granted physical or legal custody of, or*
18 *unsupervised visitation with, a child if anyone residing in the*
19 *person's household is required, as a result of a felony conviction*
20 *in which the victim was a minor, to register as a sex offender*
21 *under Section 290 of the Penal Code, unless the court finds there*
22 *is no significant risk to the child and states its reasons in writing*
23 *or on the record.*

24 (3) *The fact that a child is permitted unsupervised contact with*
25 *a person who is required, as a result of a felony conviction in*
26 *which the victim was a minor, to be registered as a sex offender*
27 *under Section 290 of the Penal Code, shall be prima facie*
28 *evidence that the child is at significant risk. When making a*
29 *determination regarding significant risk to the child, the prima*
30 *facie evidence shall constitute a presumption affecting the*
31 *burden of producing evidence. However, this presumption shall*
32 *not apply if there are factors mitigating against its application,*
33 *including whether the party seeking custody or visitation is also*
34 *required, as the result of a felony conviction in which the victim*
35 *was a minor, to register as a sex offender under Section 290 of*
36 *the Penal Code.*

37 (b) No person shall be granted custody of, or visitation with, a
38 child if the person has been convicted under Section 261 of the
39 Penal Code and the child was conceived as a result of that
40 violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent ~~suffers from the effects of battered women's syndrome~~ *experiences intimate partner battering*.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 3. Section 3030.5 is added to the Family Code, to read:

3030.5. (a) Upon the motion of one or both parents, or the legal guardian or custodian, or upon the court's own motion, an order granting physical or legal custody of, or unsupervised visitation with, a child may be modified or terminated if either of

1 the following circumstances has occurred since the order was
2 entered, unless the court finds that there is no significant risk to
3 the child and states its reasons in writing or on the record:

4 (1) The person who has been granted physical or legal custody
5 of, or unsupervised visitation with the child is required, as a
6 result of a felony conviction in which the victim was a minor, to
7 be registered as a sex offender under Section 290 of the Penal
8 Code.

9 (2) The person who has been granted physical or legal custody
10 of, or unsupervised visitation with, the child resides with another
11 person who is required, as a result of a felony conviction in
12 which the victim was a minor, to be registered as a sex offender
13 under Section 290 of the Penal Code.

14 (b) The fact that a child is permitted unsupervised contact with
15 a person who is required, as a result of a felony conviction in
16 which the victim was a minor, to be registered as a sex offender
17 under Section 290 of the Penal Code, shall be prima facie
18 evidence that the child is at significant risk. When making a
19 determination regarding significant risk to the child, the prima
20 facie evidence shall constitute a presumption affecting the burden
21 of producing evidence. However, this presumption shall not
22 apply if there are factors mitigating against its application,
23 including whether the party seeking custody or visitation is also
24 required, as the result of a felony conviction in which the victim
25 was a minor, to register as a sex offender under Section 290 of
26 the Penal Code.

27 (c) The court shall not modify an existing custody or visitation
28 order upon the ex parte petition of one party pursuant to this
29 section without providing notice to the other party and an
30 opportunity to be heard. This notice provision applies only when
31 the motion for custody or visitation change is based solely on the
32 fact that the child is allowed unsupervised contact with a person
33 required, as a result of a felony conviction in which the victim
34 was a minor, to register as a sex offender under Section 290 of
35 the Penal Code and does not affect the court's ability to remove a
36 child upon an ex parte motion when there is a showing of
37 immediate harm to the child.

38 *SEC. 4. Section 2.5 of this bill incorporates amendments to*
39 *Section 3030 of the Family Code proposed by both this bill and*
40 *AB 220. It shall only become operative if (1) both bills are*

- 1 *enacted and become effective on or before January 1, 2006, (2)*
- 2 *each bill amends Section 3030 of the Family Code, and (3) this*
- 3 *bill is enacted after AB 220, in which case Section 2 of this bill*
- 4 *shall not become operative.*

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